Sheet Metal Workers' International Association Local Union No. 19, AFL–CIO *and* Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, United Brotherhood of Carpenters and Joiners of America *and* E.P. Donnelly, Inc. *and* Primco Construction. Cases 4–CD–1139, 4–CD–1142, 4–CD–1143, 4–CD–1144, 4–CD–1145, 4–CD–1146, and 4–CD–1147

September 28, 2005

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). The charges in this proceeding were filed by Employer E.P. Donnelly, Inc. (Donnelly) on June 29 and August 26, 2004,[1] alleging that Sheet Metal Workers' International Association Local Union No. 19, AFL–CIO (Sheet Metal Workers) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing Donnelly to assign certain work to employees represented by Sheet Metal Workers rather than to employees represented by Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, United Brotherhood of Carpenters and Joiners of America (Carpenters). Donnelly also filed a charge on September 2, 2004, alleging that Carpenters violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing Donnelly to assign certain work to employees represented by Carpenters, rather than to employees represented by Sheet Metal Workers. Employer Primco Construction (Primco) also filed charges against both Sheet Metal Workers and Carpenters, on September 8 and 14, 2004, respectively, alleging similar violations of Section 8(b)(4)(D) of the Act.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that Donnelly, a Pennsylvania corporation, is engaged as a contractor in the construction industry from its Jamison, Pennsylvania offices. During the 12-month period prior to the hearing, Donnelly provided services valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. The parties have also stipulated that Primco, a Pennsylvania corporation, is engaged as a contractor in the construction industry from its Philadelphia, Pennsylvania offices. During the 12-month period prior to the hearing, Primco provided services valued in excess of $50,000 directly to points outside the Commonwealth of Pennsylvania. We therefore find that Donnelly and Primco are engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Finally, the parties have stipulated, and we find, that Carpenters and Sheet Metal Workers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

Donnelly and Primco are construction contractors that perform prefabricated standing seam metal roof installation and related tasks. Both Employers work in the Philadelphia area as well as in nearby locations in Delaware and New Jersey. Both Donnelly and Primco have collective-bargaining agreements with Carpenters. Donnelly has been using Carpenters members to perform standing seam metal roofing since 1999, and Primco has used Carpenters members to perform this work since 2003. Neither Employer has a collective-bargaining agreement with Sheet Metal Workers.

The work in dispute involves four jobsites: the Beneficial Savings Bank, the Wawa site, the Washington Savings Bank, and the Longhorn Steakhouse, all of which are located in Philadelphia, Pennsylvania. On all four of these sites, the Employers used Carpenters members to install the standing seam metal roofing and, at all four sites, the Sheet Metal Workers picketed or threatened to picket.

Primco submitted the winning bid for the Beneficial Savings Bank project and, in early September, its crew consisting of employees represented by Carpenters commenced work. On September 7, Sheet Metal Workers picketed the jobsite, causing a delay in completing the work because certain carpenter and electrical employees would not cross the picket line. During the picketing, John Barzeski, Sheet Metal Workers' business agent, spoke with Robert Grove, a carpenter with another contractor on the site. Barzeski told Grove that they were picketing because members of Carpenters were doing "their" work, i.e., work that he claimed was typically performed by members of Sheet Metal Workers. Primco subsequently received a letter from Carpenters, dated September 9, stating that they would picket the site if the work was reassigned.

Meanwhile, in early summer, P. Agnes, a general contractor, awarded the Wawa project to Donnelly, which intended to use Carpenters members to perform the standing seam metal roofing work. Following this assignment, Barzeski called P. Agnes' vice president, Pat Pasquariello, to complain about Donnelly's use of Car-

[1] All dates are 2004, unless otherwise specified.

penters for the work. Barzeski told Pasquariello that Sheet Metal Workers was going to dispute Donnelly's use of Carpenters and may put up a picket line. Barzeski added that he had a problem with Donnelly's use of employees represented by Carpenters, rather than Sheet Metal Workers members, to perform the work. At no time during this conversation did Barzeski mention wages or area standards.

Subsequently, on June 24, Sheet Metal Workers sent P. Agnes a letter stating that Sheet Metal Workers intended to picket the Wawa site assertedly to enforce area standards. Sheet Metal Workers picketed the Wawa site from June 28 to July 7. During this picketing, Barzeski spoke with Ed Jackson, a superintendent on the Wawa site, and told him that he had a problem with Carpenters performing work that belonged to Sheet Metal Workers.[2]

TNT Construction awarded the Washington Savings Bank job to Donnelly in early 2004.[3] During the first week of March, when Carpenters members began performing the work for Donnelly, Barzeski came to the jobsite and spoke with TNT Superintendent Mike Laing. Barzeski complained to Laing about the quality of Donnelly's work and stated that the work was Sheet Metal Workers' work, not Carpenters' work. Barzeski did not mention wages or area standards during this conversation. On August 30, Sheet Metal Workers set up a picket line around the bank project, preventing Donnelly from unloading roofing materials. On August 31, Carpenters sent Donnelly a letter threatening to picket if the Washington Savings Bank work was reassigned.

Finally, Deerfield Construction (Deerfield) assigned the Longhorn Steakhouse standing seam metal roofing job to Donnelly on July 9. On July 15, Donnelly received a letter from Sheet Metal Workers assertedly disclaiming interest in the work but informing Donnelly that Sheet Metal Workers intended to picket the site to enforce area standards.

On August 25, Donnelly Superintendent Gerry Campi noticed people on the jobsite that he recognized as members of Sheet Metal Workers. Campi was then approached by a Deerfield superintendent named Dave who told him that electricians were cutting power to the building. Dave asked Campi if Donnelly would consider using a composite crew of Sheet Metal Workers and Carpenters for the roofing job, and Campi refused. The next day, when Campi returned to the jobsite, he was approached by a Deerfield superintendent. The superintendent told Campi that Donnelly's workers would not be allowed to continue work at the site. As Campi was leaving, he noticed Barzeski and other members of Sheet Metal Workers on the site. Donnelly subsequently received a letter from Carpenters threatening to picket if the work was reassigned.

B. Work in Dispute

The work immediately in dispute in this case is the installation of prefabricated standing seam metal roofing, soffit, fascia, and related trim performed by Employer Primco at the Beneficial Savings Bank in Philadelphia, Pennsylvania, and by Employer Donnelly at the Wawa site, Washington Savings Bank site, and Longhorn Steakhouse site in Philadelphia, Pennsylvania.

C. Contentions of the Parties

Both Employers contend that a jurisdictional dispute exists and there is no agreed-upon method for resolving the dispute. The Employers argue that there is reasonable cause to believe that both Carpenters and Sheet Metal Workers violated Section 8(b)(4)(D) of the Act, and that the work in dispute should be awarded to employees represented by Carpenters based on the factors of collective-bargaining agreements, employer preference and past practice, area and industry practice, and economy and efficiency of operations. The Employers argue that a broad award, covering all standing seam metal roofing work by the Employers wherever the territorial jurisdictions of Carpenters and Sheet Metal Workers coincide, is appropriate in this case.

Sheet Metal Workers has moved to quash the Section 10(k) notice of hearing with respect to the charges filed against it, arguing that there is no reasonable cause to believe that Sheet Metal Workers violated Section 8(b)(4)(D) of the Act. Sheet Metal Workers argues that it did not picket to obtain the disputed work, but rather picketed to enforce area standards. However, with respect to the 8(b)(4)(D) charges filed against Carpenters, Sheet Metal Workers admits in its brief that these allegations are supported by Carpenters' threats to picket the Washington Savings Bank, Beneficial Savings Bank, and Longhorn Steakhouse sites if the roofing work at those sites were reassigned to employees not represented by Carpenters. As to seam metal roofing work at those three sites, Sheet Metal Workers argues that the employees it represents should be awarded the disputed work based on the factors of area practice, relative skill and training, and economy and efficiency of operations. Sheet Metal Workers contends that the Board should accord less weight to the factors of collective-bargaining agreements and employer preference.[4]

Carpenters argues that there is reasonable cause to believe that both Carpenters and Sheet Metal Workers violated Section 8(b)(4)(D) of the Act. Carpenters argues that the Board should award the disputed work to em-

[2] At roughly the same time as these events related to the Wawa site occurred, at a building trades meeting attended by representatives of various area construction unions, Barzeski questioned a Carpenters member as to why they were performing Sheet Metal Workers' work.

[3] The exact date of this subcontract cannot be determined from the record.

[4] Sheet Metal Workers has not addressed Donnelly's and Carpenters' requests for a broad award other than to note that Donnelly does not perform work in Delaware.

ployees represented by Carpenters based on the factors of collective-bargaining agreements, employer preference and past practice, relative skills, and economy and efficiency of operations. Finally, Carpenters argues that a broad award is appropriate in this case.

D. Applicability of the Statute

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, it must be established that (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have no agreed-upon method for the voluntary adjustment of the dispute. *Carpenters Local 275 (Lymo Construction Co.)*, 334 NLRB 422, 423 (2001).

As discussed, Sheet Metal Workers argues that there is no reasonable cause to believe that it has violated Section 8(b)(4)(D) because it has not made a claim for the work. Sheet Metal Workers contends that it picketed solely to enforce area standard wages and, in support, states that the language of its signs protested the Employers' lack of adherence to area standards. Sheet Metal Workers further asserts that, on at least one occasion, it explicitly informed Donnelly by letter that it was not seeking the work at issue and that its only objective in picketing the worksites was to enforce area standards.

We find, contrary to Sheet Metal Workers' contention, that there is reasonable cause to believe that Sheet Metal Workers violated Section 8(b)(4)(D). As noted by Sheet Metal Workers, area standards picketing is not proscribed by the Act, and such picketing does not, by itself, furnish reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. *Carpenters Local 98-T (Permacrete Products)*, 307 NLRB 401, 403 (1992). However, even where one object of picketing is to protect area standards, if the evidence shows reasonable cause to believe that another objective of the picketing is to obtain disputed work, that is sufficient to bring the union's conduct within the ambit of Section 8(b)(4)(D). Id. at 403 fn. 4. As for Sheet Metal Workers' contention that it disclaimed the disputed work, that contention is unavailing if the evidence shows that Sheet Metal Workers continued to engage in conduct with a proscribed objective. For example, in *Electrical Workers Local 124 (Pepper Construction Co.)*, 339 NLRB 123 (2003), the Board found reasonable cause to believe that Section 8(b)(4)(D) had been violated where a union expressly disclaimed the work at issue and argued that it picketed to preserve area standards, but the evidence showed that the union's business agent made several statements indicating that the union sought the disputed work.[5]

In assessing whether one of the objects of a union's picketing is to acquire disputed work, the Board considers not only the statements made by the union to the parties involved in the dispute, but also the statements made by the union to third parties. Thus, the Board has found a dispute cognizable under Section 8(b)(4)(D) based on statements made by the union's business agent to the project superintendent that the work at issue should be assigned only to the employees his union represents. *Pepper Construction*, supra at 125. And in *Permacrete Products*, supra, the Board found that the picketing had a proscribed objective based, in part, on the union's agent's testimony at the hearing that the employees it represents should be performing the work.

Here, we find that Sheet Metal Workers' letter disclaiming the work at issue does not preclude a finding that one of its objectives in picketing was to obtain the disputed work. Sheet Metal Workers' business agent Barzeski made numerous statements to general contractors, to members of Carpenters, and to other third parties that Sheet Metal Workers members should be doing the disputed roofing work. In addition, during conversations with contractors in which Barzeski expressed his belief that Sheet Metal Workers members should perform the work, Barzeski never mentioned wages or area standards. Finally, at the hearing, a former Sheet Metal Workers president testified that Sheet Metal Workers would continue to pursue standing seam metal roofing work awarded to Carpenters because it is his union's belief that this work belongs with Sheet Metal Workers.

Given these facts, we find that Sheet Metal Workers did, in fact, seek the work in dispute being performed by Carpenters. We also find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, both by Carpenters, who three times threatened to picket to retain the disputed work, and by Sheet Metal Workers, who, as noted above, picketed ostensibly for area standards but also with the object of obtaining the disputed work. Finally, the parties have stipulated that there is no method for voluntary adjustment of the dispute to which all parties are bound. We therefore deny Sheet Metal Workers' motion to quash because we find that all three jurisdictional prerequisites are established, and the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

[5] See also *Plumbers Local 290 (Streimers Sheet Metal Works)*, 319 NLRB 891 (1995) (finding reasonable cause to believe that Sec. 8(b)(4)(D) had been violated even though union issued written disclaimer of work and claimed its picketing was in furtherance of area standards).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

Both Donnelly and Primco have collective-bargaining agreements with Carpenters to install metal roofing.[6] Neither Employer has a collective-bargaining agreement with Sheet Metal Workers.

Sheet Metal Workers appears to suggest that Carpenters' collective-bargaining agreement with Donnelly is not valid because it is undated. Sheet Metal Workers also observes that Carpenters' collective-bargaining agreement does not include the full array of tasks involved in standing seam metal roofing, such as installation of soffits, coping, and flashing.

The agreement between Carpenters and Donnelly (binding as well on Primco, supra fn. 6) contains the following jurisdictional statement:

> All work in connection with the . . . erection and installation by any means, of all types of the following items, including, but not limited to: . . . awnings; skylights; column covers; window capping; fascias and soffits; siding . . . caulking and weather proofing; blocking and protection work; metal roofing.

Thus, it is apparent from the above statement that the contract's terms cover the disputed work, or in the alternative, contain sufficiently broad language to cover other standing seam metal roofing tasks not explicitly mentioned in the agreement. In addition, the contract between Carpenters and Donnelly is dated June 22, 1999, and contains a clause that automatically renews the agreement for a 3-year period unless written notice to terminate is produced by either party. There is no evidence that either party has sought to terminate the agreement.

Accordingly, we find that this factor favors an award of the disputed work to employees represented by Carpenters.

2. Employer preference and past practice

At the hearing, Primco's owner, Richard Rainieri, testified that he prefers using employees represented by Carpenters on his jobs and, except on one occasion in which he used a composite crew to avoid a jurisdictional dispute, has used employees represented by Carpenters on all of Primco's standing seam metal roofing jobs since 2003. Similarly, Gerry Campi, superintendent for Donnelly, testified that he prefers using employees represented by Carpenters for Donnelly's roofing projects and has used crews consisting of members of Carpenters exclusively since 1999.

Although Sheet Metal Workers presented voluminous evidence of other employers' use of Sheet Metal Workers to perform standing seam metal roofing work, it presented nothing to dispute the above testimony of the Employers in this case or the evidence that Donnelly has used Carpenters members since 1999 and Primco since 2003. Accordingly, we find that the factor of employer preference and past practice favors awarding the work in dispute to employees represented by Carpenters.

3. Area and industry practice

Sheet Metal Workers argues that it has historically performed standing seam metal roofing and its workers are commonly used to perform this work nationwide. Sheet Metal Workers presented a number of witnesses who testified to the large number of roofing jobs its members have performed in the Philadelphia area. Sheet Metal Workers also presented as witnesses members of other trades, such as electricians, who testified that they observed members of Sheet Metal Workers performing roofing work on all of the jobsites at which they worked. Based on this testimony, Sheet Metal Workers argues that standing seam metal roofing contracts are awarded to members of Sheet Metal Workers 90 percent of the time. Sheet Metal Workers also cites in support to the Department of Labor's Dictionary of Occupational Titles, which includes roofing as within the skill set of the sheet metal worker.

The record shows that employees represented by Carpenters have performed at least 40 roofing jobs for Donnelly and possibly dozens more for other contractors in the several years preceding the instant dispute. Given the evidence that employees represented by both Unions commonly perform standing seam metal roofing, we find that the factor of area and industry practice does not favor an award to either group of employees.

4. Relative skills

Sheet Metal Workers argues that standing seam metal work is one of the cornerstone tasks performed by its members. Sheet Metal Workers presented detailed evidence about its training programs and experience in the fabrication and installation of standing seam metal roofs. Sheet Metal Workers also presented testimony from the project manager of one of Donnelly's previous jobs who stated that after a standing seam metal roof had been substantially completed by Carpenters members, he observed that the roof continued to leak. Citing this testimony, Sheet Metal Workers argues that employees represented by Carpenters have a history of defective workmanship, which illustrates that Sheet Metal Workers are better skilled at this type of work. Carpenters argues that members of both Sheet Metal Workers and Carpenters possess and utilize similar skills in performing this work.

[6] Specifically, Donnelly has a collective-bargaining agreement with Carpenters, and Primco has a collective-bargaining agreement with the United Brotherhood of Carpenters and Joiners of America, the terms of which require Primco to abide by the Carpenters contract when working within Carpenters' territorial jurisdiction.

We find that both groups are sufficiently trained in installing prefabricated standing seam metal roofs, which arrive at the jobsite readymade from the manufacturer. The record evidence shows that installation of such prefabricated roofs does not involve extensive sheet metal training, that installation of these roofs is generally learned on the job during an apprenticeship program, and that both Unions have training programs in standing seam metal roofing installation.

With regard to Carpenters' purported errors in workmanship, the record testimony establishes that area contractors have found Carpenters work to be satisfactory. Specifically, representatives Mike Laing and Tim Donahue of general contractor TNT Construction both testified that they are satisfied with the work that Donnelly has performed for them. Similarly, Ed Jackson of general contractor P. Agnes testified that he was satisfied with Donnelly's performance on its projects. In addition, the sheet metal specialists' testimony at the hearing establishes that many of the defects cited by Sheet Metal Workers, such as leaks, are commonplace, easily remedied, and generally reflect errors in the fabrication of the roofs rather than the skills of the installers.

Sheet Metal Workers further argues that it has a greater number of workers trained to certify completed roofs for certain warranties, such as waterproofing. However, the record shows that both Unions have certified workers, and, in general, only the supervisors on the job are required to be certified. Given this, we find that both groups of employees have a sufficient number of certified workers to obtain the desired roofing warranties.

Accordingly, we find that the factor of relative skills does not favor an award to either group of employees.

5. Economy and efficiency of operations

The record shows that employees represented by both Unions are sufficiently skilled in performing the disputed work. However, in addition to their roofing skills, the record evidence shows that Carpenters' members possess additional skills that contribute to the overall efficiency of Donnelly's and Primco's operations. Specifically, Primco's president, Rainieri, testified that, in addition to performing installation tasks, Carpenters-represented employees are able to perform related carpentry tasks. Because of these employees' related skills, Rainieri avoids having to assign work piecemeal to different trades. Although Sheet Metal Workers argues that this factor favors the employees it represents because of their greater skill and experience in metal roofing work, it has not presented evidence contradicting Rainieri's testimony. Accordingly, we find that the factor of economy and efficiency of operations favors awarding the work in dispute to employees represented by Carpenters.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Carpenters are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, and economy and efficiency of operations.[7] In making this determination, we are awarding the disputed work to employees represented by Carpenters, not to that labor organization or its members.

The Employers have requested that our award encompass not just the four sites at issue here, but all future Donnelly and Primco jobs wherever the geographic jurisdictions of Carpenters and Sheet Metal Workers coincide. Carpenters also contends that such an award is appropriate, arguing that Sheet Metal Workers members have consistently harassed employers to force them to use employees represented by Sheet Metal Workers, and are likely to continue this harassment in the future.

We agree with the Employers and Carpenters that a broad award is appropriate in this case. In determining whether a broad award is appropriate, the Board looks to whether (1) the work in dispute has been a continuous source of controversy in the relevant geographic area and similar disputes may recur; and (2) there is evidence demonstrating the offending union's proclivity to engage in further unlawful conduct in order to obtain work similar to that in dispute. *Electrical Workers Local 98 (Total Cabling Specialists)*, 337 NLRB 1275, 1277 (2002).

The instant dispute involves four separate jobsites that have been disrupted by Sheet Metal Workers' pickets. In addition to their pickets, the record shows that Sheet Metal Workers has pressured other contractors employing Carpenters members to hire composite crews. The dispute has become a source of contention not just at the jobsites, but also in neutral settings such as building trades meetings, in which representatives of Sheet Metal Workers confronted Carpenters members in the presence of neutral union observers. Given this evidence, it is clear that this dispute has been ongoing and will likely remain so. As to the second factor, Sheet Metal Workers' past president and current General Secretary Treasurer of Sheet Metal Workers' International Association, Thomas Kelly, testified that his Union would continue to seek out standing seam metal roofing jobs awarded to Carpenters members. In view of this testimony, and in view of Sheet Metal Workers' proscribed conduct discussed above, we find that the record demonstrates Sheet Metal Workers' proclivity to engage in further unlawful conduct to obtain work of the kind in dispute.

Our colleague correctly notes that the Board normally denies requests for area awards where the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to

[7] In addition, we note that Carpenters argues that it would sustain a substantial loss of jobs if the work is reassigned. By contrast, Sheet Metal Workers would experience no loss of jobs. The Board has previously considered job loss in making a 10(k) determination. *Iron Workers Local 40 (Unique Rigging)*, 317 NLRB 231, 233 (1995).

assign the work. In the instant case, that charged party is the Carpenters. If that union were the only charged party, we might agree that a broad order against it is unnecessary and unwarranted. However, there is another charged party here, Sheet Metal Workers Local 19. That union is not the awardee, and the Employer does not contemplate assigning the work to it. Thus, there is at least a reasonable prospect that that union will engage in future 8(b)(4)(D) conduct. And, should it do so, it is likely that the Carpenters would respond in kind.

On the above basis, the cases cited by our colleague, *Bricklayers (W. R. Weis Co.)*, 336 NLRB 699, 702 (2001), and *Laborers (Paul H. Schwendener, Inc.)*, 304 NLRB 623, 625–626 (1991), are distinguishable. In those cases the union representing the employees to whom the work was awarded was the only charged party.

We recognize that there are no prior Board cases in which employees represented by Sheet Metal Workers Local 19 "lost" a 10(k) award. However, we do not believe that this precludes a broad award. The issue of the breadth of an award turns on whether the controversy is likely to continue and whether there is a proclivity to engage in 8(b)(4)(D) conduct to get the work. As to the first point, we noted above that the instant dispute is likely to recur. As to the latter point, we note that Sheet Metal Workers Local 19 picketed or threatened to picket at four different jobsites. If the first three instances had been the subject of prior Board awards, we have little doubt that a fourth instance would give rise to a broad award. Logically, it should make no difference that, as here, all four occur in one case. The critical fact is that there have been four instances of probable 8(b)(4)(D) conduct, and this would suggest a proclivity to engage in such conduct.

We further find distinguishable the cases cited by our colleague in support of her contention that Sheet Metal Workers has not demonstrated a proclivity to violate the Act. Thus, our colleague cites *Plumbers Local 562 (Grossman Contracting)*, 329 NLRB 516 (1999), and *Plumbers Local 562 (Charles E. Jarrell Contracting)*, 329 NLRB 529 (1999), for the proposition that the Board "does not rely on the number of sites involved in a particular proceeding in deciding whether proclivity has been demonstrated." In the cited cases, however, the Board did not decide whether proclivity had been demonstrated. Rather, without addressing the issue of proclivity, it declined to grant an areawide award based solely on the fact that the charged party represented the employees to whom the work was awarded and to whom the employer contemplated continuing to assign the work (and, as in *W. R. Weis*, supra, and *Paul H. Schwendener*, supra, the union representing the employees to whom the work was awarded was the only charged party). *Grossman Contracting*, supra at 527–528; *Jarrell Contracting*, supra at 534. In *Laborers Local 210 (Concrete Cutting & Breaking*), 328 NLRB 1314 (1999), there was no evidence, as here, of the union's proclivity to engage in conduct violating Section 8(b)(4)(D). Rather, in that case the Board found only that the union "*may have*" engaged in other 8(b)(4)(D) conduct. *Concrete Cutting & Breaking*, supra at 1316 (emphasis added). Here, as noted above, Sheet Metal Workers' proclivity to engage in future misconduct is evidenced by the entire record, including the public statements of its officials at building trades meetings and the testimony of its past president asserting that Sheet Metal Workers intended to pursue future jobs awarded to members of Carpenters.

Accordingly, we find that a broad award is appropriate in this case.[8]

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute:

1. Employees of E.P. Donnelly, Inc., and Primco Construction represented by Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland, United Brotherhood of Carpenters and Joiners of America, are entitled to perform all prefabricated standing seam metal roofing jobs awarded to Donnelly or Primco in the area in which Donnelly and Primco operate and in which the jurisdictions of Carpenters and Sheet Metal Workers' International Association Local Union No. 19 overlap.

2. Sheet Metal Workers' International Association Local Union No. 19 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force E.P. Donnelly, Inc., or Primco Construction to assign the disputed work to employees represented by it.

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[8] Member Liebman would not issue a broad award in this case. The Board will grant an area award when there is a likelihood of recurrent disputes within the geographic area in issue and the charged party-union demonstrates a proclivity to violate the Act. *Iron Workers Local 1 (Advance Cast Stone)*, 338 NLRB 43, 48 (2002). The Board normally declines to grant area awards in cases, such as this, in which the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. *Bricklayers (W. R. Weis Co.)*, supra, citing *Laborers Local 243 (A. Amorello & Sons)*, 314 NLRB 501, 503 (1994), and *Laborers (Paul H. Schwendener)*, supra at 625–626. Here, the Carpenters are a charged party, employees it represents currently perform the work, and the Employer contemplates continuing to assign them the work. Accordingly, the conduct of the Carpenters does not in itself warrant a broad order. See, e.g., *Laborers Local 210 (Concrete Cutting & Breaking)*, supra at 1316.

Further, in Member Liebman's view, in the absence of other Board determinations against Local 19, the record is insufficient to establish a proclivity by that union to violate the Act. Cf. *Electrical Workers Local 98 (Total Cabling Specialists)*, 337 NLRB 1275, 1277–1278 (2002); *Electrical Workers Local 103 (Comm-Tract Corp.)*, 307 NLRB 384, 387–388 (1992). The Board customarily does not rely on the number of sites involved in a particular proceeding in deciding whether proclivity has been demonstrated. See *Plumbers Local 562 (Grossman Contracting)*, supra, and *Plumbers Local 562 (Jarrell Contracting)*, supra. Also, see *Concrete Cutting & Breaking*, supra at 1316 (broad award declined despite threat of job actions "on every jobsite in western New York").

3. Within 14 days from this date, Sheet Metal Workers' International Association Local Union No. 19 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing E.P. Donnelly, Inc., and Primco Construction, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. September 28, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD